

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**In the Matter of:** )  
 )  
**COAL COMBUSTION WASTE (CCW)** ) **R14-10**  
**ASH PONDS AND SURFACE** ) **(Rulemaking – Water)**  
**IMPOUNDMENTS AT POWER** )  
**GENERATING FACILITIES:** )  
**PROPOSED NEW 35 ILL. ADM.** )  
**CODE 841** )

**NOTICE OF FILING**

TO: See attached Service List

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the attached **ENVIRONMENTAL GROUPS' RESPONSE TO ILLINOIS POLLUTION CONTROL BOARD ORDER TO SHOW CAUSE** copies of which are attached hereto and herewith served upon you.

Respectfully submitted,



Dated: April 29, 2019

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**ENVIRONMENTAL GROUPS' RESPONSE TO ILLINOIS POLLUTION CONTROL BOARD ORDER TO SHOW CAUSE**

Environmental Groups (Prairie Rivers Network, Sierra Club, and Environmental Law & Policy Center) submit this response to the Board's March 28, 2019 Order to Show Cause for why this docket should not be closed. Because there is pending legislation directly on the subject of coal ash regulation in the Illinois General Assembly, we oppose dismissing this docket until there is clarity on whether the pending legislation will be enacted. As a result, we request that the Board delay any decision on dismissing this docket until after the official legislative session ends on May 31, 2019, and allow parties to comment on appropriate next steps on June 14, 2019.

**BACKGROUND**

The scope of coal ash pollution in Illinois is extensive. Some of the Environmental Groups recently published a report documenting the extent of such pollution. *See* CAP AND RUN: TOXIC COAL ASH LEFT BEHIND BY BIG POLLUTERS THREATENS ILLINOIS WATER (Nov. 27, 2018).<sup>1</sup> The report found that dozens of coal ash impoundments in Illinois are unlined.<sup>2</sup> *Id.* at 9;

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<sup>1</sup> Available online at [https://illinoiscoalash.files.wordpress.com/2018/12/ilcoalashreport\\_capandrun.pdf](https://illinoiscoalash.files.wordpress.com/2018/12/ilcoalashreport_capandrun.pdf) (last accessed April 25, 2019), archived at <https://perma.cc/Q29L-E9XE>

<sup>2</sup> The federal coal ash rule defines ash impoundments (or ponds) as unlined if they cannot meet the rule's liner design standards. For existing impoundments, the design standards require a very low conductivity "composite liner" made up of clay plus a geomembrane (plastic) liner, or an "alternative composite liner" with similarly low conductivity. 40 C.F.R. § 257.71; *Util. Solid Waste Activities Grp. v. Envtl. Prot. Agency*, 901 F.3d 414, 432 (D.C. Cir. 2018) (vacating provision considering solely clay-lined impoundments to be lined). Owners of coal ash units are

*see also* Attachment A, CAP AND RUN: TOXIC COAL ASH LEFT BEHIND BY BIG POLLUTERS THREATENS ILLINOIS WATER (Nov. 27, 2018)<sup>3</sup> (Attachment A lists out the known liner status of most impoundments in Illinois).

The dozens of unlined impoundments in Illinois pose a great risk to the environment and public health. As the D.C. Circuit recently found, while lined impoundments only have a 0.1 percent chance of contaminating groundwater at drinking water wells a mile distant from the impoundment parameter, unlined coal ash impoundments have at least a 36.2 percent chance of contaminating groundwater at such a distance. *Util. Solid Waste Activities Grp. v. Evtl. Prot. Agency*, 901 F.3d 414, 428 (D.C. Cir. 2018). The D.C. Circuit further summarized the risks from unlined impoundments as follows:

The record shows, however, that the vast majority of existing impoundments are unlined, see Regulatory Impact Analysis 3-4, J.A. 1108, that unlined impoundments have a 36.2 to 57 per cent chance of leakage at a harmfully contaminating level during their foreseeable use, see *id.* at 4-9, 5-22, J.A. 1111–1112, and that the threat of contamination from unlined units exceeds the EPA’s cancer risk criteria and thus “generally will be considered to pose a substantial present or potential hazard to human health and the environment,” 80 Fed. Reg. at 21,449–21,450; see Risk Assessment 5-5, J.A. 1041.

*Id.* at 427.

## RESPONSE

While we generally agree with the Board that some of the record in this docket has become stale, we oppose dismissing this docket at this time for two reasons. First and primarily, we oppose dismissing the docket because there is pending legislation in the Illinois General Assembly directly on the issue of coal ash regulation. On January 9, 2019, Senate Bill 09, titled,

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required to certify that their liner meets the rule’s design criteria. If a liner does not meet the prescribed criteria, or if an owner fails to certify the liner, then the rule defines that ash pond as “unlined.”

<sup>3</sup> Attachment A available online at

<https://drive.google.com/file/d/0B2GI2qumwuw2M2Z2QUZyYmZJOEZGQVQ4LTJ3bjd6WWtVOUl/view> (last accessed April 25, 2019), archived at <https://perma.cc/P82X-YN3V>.

as amended, "Coal Ash Pollution Prevention Act," was filed with the Illinois General Assembly.<sup>4</sup> The outcome of this pending legislation, and whether or not it will be enacted, has a direct effect on whether or not dismissing this docket would cause actual prejudice to our interests. As amended, the pending legislation would provide the Board additional authority to regulate coal ash impoundments and landfills and require the Agency to propose new coal ash impoundment rules later this year. In the event the pending legislation is enacted, the Board and the parties should consider whether it would be appropriate to enact implementing regulations in a new docket or in this docket.

Second, we oppose dismissing the docket because there is an urgent need for comprehensive regulations to govern the closure and corrective action (cleanup) of the many polluting coal ash impoundments in Illinois. In particular, because federal law will require dozens of unlined impoundments in Illinois to close, there need to be Illinois rules in place that prioritize closure of high-risk impoundments and those near areas with environmental justice concerns, and do so in a manner that ensures safe closure, complete cleanup, and meaningful public participation. Right now, there is no clearly required process for such corrective action and closure activities, nor are there any rules allowing public participation in the process or rules ensuring the closure of impoundments pursuant to the federal rules is as protective as possible.

Due to the pending legislation on this topic and the urgent need for regulation, we cannot be certain whether closure of this docket will cause prejudice. As a result, the Board should hold off on dismissing this docket until the fate of that pending legislation is known. Therefore, because the official legislative session ends on May 31, 2019, the Board should invite parties to comment on appropriate next steps on June 14, 2019 and then reassess whether dismissal is

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<sup>4</sup><http://www.ilga.gov/legislation/BillStatus.asp?DocNum=9&GAID=15&DocTypeID=SB&LegId=113581&SessionID=108&GA=101>

warranted.

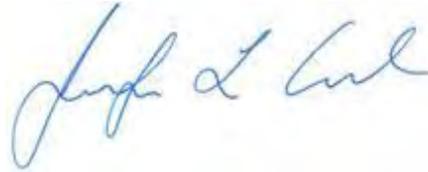
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **NOTICE OF FILING** and **ENVIRONMENTAL GROUPS' RESPONSE TO ILLINOIS POLLUTION CONTROL BOARD ORDER TO SHOW CAUSE** were served electronically to all parties of record listed below, on April 29, 2019.

Respectfully submitted,

/s/ Jocelyn Castro

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